



Gallagher Bassett Services, Inc.

**CERTIFIED MAIL – RETURN RECEIPT & REGULAR MAIL**  
**CMRR#: 7006 2150 0004 1677 0017**

May 23, 2007

Yonkers Racing Corporation  
810 Central Avenue  
Yonkers, New York 10704  
Attention: Marie Reilly  
Legal Counsel

RE:	Your Claim Number:	Not Provided
	Our Claim File:	002595-000049-GB-01
	Insured:	Tishman Construction Corp of NY
	Claimant:	Mary Degaeta
	Date of Loss:	02/17/2007

Dear Ms. Reilly:

Gallagher Bassett Services, Inc. is the authorized claims administrator for Arch Insurance Company (hereinafter referred to as Arch). Arch is the commercial general liability insurance carrier for Tishman Construction Corporation of New York.

Our office is in receipt of the Summons and Complaint filed on behalf of Mary Degaeta and against Yonkers Racing Corporation, et al. It is alleged that Ms. Degaeta sustained injury on February 17, 2007 at the Empire Casino, 810 Yonkers Avenue, Yonkers, New York when she tripped and fell over a metal pipe protruding from behind a curtain.

Please allow this correspondence to serve as Arch Insurance Company's disclaimer of coverage. Nothing contained herein or omitted here from shall be construed as a waiver of any terms or conditions of the policy, or of Arch Insurance Company's rights there under, all of which continue in full force and effect and are expressly reserved. Arch will rely on the policy terms and conditions to further limit, expand or deny all coverage that may not be afforded under the policy as they relate to the underlying action or any new information.

Arch Insurance Company issued Commercial General Liability Coverage to Tishman Construction Corporation of New York (hereinafter referred to as Tishman), policy number 11GPP2056800 effective 09/09/2005 to 03/09/2007.

We direct your attention to the following applicable policy provisions without waiving Arch's rights to rely on any of the terms and conditions, which remain in full force and effect. By addressing coverage issues herein, we do not suggest that there is any merit to the claimant's argument or claim.

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Through this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
  - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred in whole or in part.

**3**  
002595-000049-GB-01

If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a.** You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1)** How, when and where the "occurrence" or offense took place;
  - (2)** The names and addresses of any injured persons and witnesses; and
  - (3)** The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b.** If a claim is made or "suit" is brought against any insured, you must:
  - (1)** Immediately record the specifics of the claim or "suit" and the date received; and
  - (2)** Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c.** You and any other involved insured must:
  - (1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2)** Authorize us to obtain records and other information;
  - (3)** Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d.** No insured will, except at the insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**4**

002595-000049-GB-01

Yonkers Racing Corp is not entitled to coverage under this coverage form for violating the Commercial General Liability Conditions, Duties In The Event Of Occurrence Offense Claim Or Suit. Specifically Yonkers Racing Corp failed to see to it that we were notified as soon as practicable of this occurrence or offense which may result in a claim. Yonkers Racing Corp had notice of this occurrence on or about February 17, 2007 and to date has not notified us of this occurrence. Furthermore, Yonkers Racing Corp did not notify us as soon as practicable of this claim. They also failed to immediately send us copies of the legal papers they were served upon them in connection with this matter.

**LIMITATION OF COVERAGE TO DESIGNATED  
PREMISES OR PROJECT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Premises:**

THE EMPIRE CITY CASINO AT YONKERS RACEWAY, TISHMAN PROJECT NUMBER C-0199, LOCATED AT 810 CENTRAL AVENUE, YONKERS, NEW YORK, 10704; AS FURTHER DEFINED BY THE SITE PLAN MAP ON FILE WITH THE COMPANY.

**Project:**

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

Yonkers Racing Corp is not entitled to coverage under this policy, since this loss did not occur as the result of Tishman's project, Number C-0199 known as the Empire City Casino at Yonkers Raceway. Specifically this incident occurred in the area of the Empire City Casino that was open and occupied for use by patrons. It is alleged that the plaintiff tripped and fell over a pipe protruding from behind a curtain. Our investigation has determined that this curtain was installed by or on behalf of Yonkers Racing Corp to section off the unopened completed area of the casino.

**EXCLUSION – DESIGNATED ONGOING OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Description of Designated Ongoing Operation(s):**

5

002595-000049-GB-01

**ALL OPERATIONS OF THE PROJECT OWNER, WITH EXCEPTION TO THEIR CAPACITY AS PROJECT OWNER, NAMED INSURED OR ADDITIONAL INSURED AS RESPECTS TO CONSTRUCTION OPATIONS INSURED BY THIS POLICY.**

**Specified Location (If Applicable):**

**THE EMPIRE CITY CASINO AT YONKERS RACEWAY, TISHMAN PROJECT NUMBER C-0199.**

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

This insurance does not apply to “bodily injury” or “property damage” arising out of the ongoing operations described in the Schedule of this endorsement, regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or for others.

Unless a “location” is specified in the Schedule, this exclusion applies regardless of where such operations are conducted by your or on your behalf. If a specific “location” is designated in the Schedule of this endorsement, this exclusion applies only to the described ongoing operations conducted at that “location”.

For the purposes of this endorsement, “location” means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

Yonkers Racing Corporation is not entitled to coverage under this policy, since all operations of the project owner are excluded. This loss occurred in the area of the Empire City Casino that was completed and sectioned off by or on behalf of Yonkers Racing Corporation utilizing a curtain installed on or above pipe stations to conceal the unopened areas from patrons.

**ADDITIONAL INSURED – AUTOMATIC STATUS WHEN REQUIRED IN  
CONSTRUCTION AGREEMENT WITH YOU – COMPLETED OPERATIONS –  
PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

Section II – Who is an Insured is amended to include as an insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is an additional insured on your policy. Such person or organization is an additional insured only with respect to liability arising out of:

- i) “your work” at the location designated; or
- ii) the “products-completed operations hazard.”

Coverage afforded to these additional insured parties will be primary to, and non-contributory with, any other insurance available to that person or organization.



6

002595-000049-GB-01

Location(s): THE EMPIRE CITY CASINO AT YONKERS RACEWAY PROJECT, TISHMAN PROJECT NUMBER C-0199, LOCATED AT 810 CENTRAL AVENUE, YONKERS, NEW YORK 10704; AND APPLICABLE FOR ACCEPTED CONTRACTORS ONLY UNDER THE CONTRACTOR CONTROLLED INSURANCE PROGRAM FOR THIS PROJECT.

All other terms and conditions of the Policy remain unchanged

Yonkers Racing Corporation is not entitled to coverage as an additional insured since this loss did not occur as a result of the Tishman Project, Number C-0199 known as the Empire City Casino.

In light of the above, we again remind you that there is no coverage for Yonkers Racing Corporation for this loss. Yonkers Racing Corporation is not an insured under the policy of insurance. No coverage, neither defense nor indemnity will be provided to Tishman, Mary Degaeta or any individual or entity based upon any obligation allegedly owed to Yonkers Racing Corporation under the policy.

We will not contribute to any verdicts, settlements or judgments, which may arise out of this loss. We will neither defend nor indemnify them in this matter. We suggest that you take whatever steps you deem necessary to insure that their rights are protected. This means that they are responsible to provide for the defense of any action at their own costs; as well as providing for the reimbursement or indemnification of any damages that may be adjudicated against them or negotiated by their representative in their behalf.

This letter is not intended to be an exhaustive review of all policy conditions and is not intended to indicate that any allegations are of any merit. Should additional information arise at a future date, Arch Insurance Company will rely on the policy terms and conditions to further limit, expand or deny all coverage that may not be afforded under the policy as they relate to those allegations or any new information.

As always, we invite you to submit any further information that you believe would be pertinent or might cause us to re-evaluate our position in regard to the limitations set forth within this letter. Should you have such information, we ask that you immediately submit it to the undersigned for further review.

Arch Insurance Company reserves all rights under this policy of insurance and all rights at law to disclaim coverage on any additional or alternative basis as other conditions, terms, exclusions, endorsements or provisions of this or of the law are found applicable. This includes the right to seek the intervention of the courts to declare the rights of the policy as they relate to all parties.

Very truly yours,

Debra L. Meyer  
Senior Claims Representative

DLM/dm

cc:

7

002595-000049-GB-01

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